



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF
STATE PLANNING COORDINATION

July 14, 2005

Mr. Alan McCarthy
652 Biddle Street
Chesapeake City, MD 21915

RE: PLUS 2005-06-16, McCarthy Property

Dear Mr. McCarthy,

Thank you for meeting with State agency planners on June 29, 2005 to discuss the proposed plans for the McCarthy Property on Bay Road near Milford. According to the information received, you are seeking a rezoning to allow office/retail use of the parcel.

These comments reflect only issues that are the responsibility of the agencies represented at the meeting. You will also need to comply with any Federal, State and local regulations regarding this property. Kent County is the governing authority over this land and you will need to comply with any and all regulations/restrictions set forth by the County.

Office of State Planning Coordination – Contact David Edgell 739-3090

The rezoning of this property is at the discretion of Kent County Levy Court. Should the Levy Court ultimately choose to grant this rezoning request, a comprehensive plan amendment will be required. This rezoning is located in Investment Level 3 according to the *Strategies for State Policies and Spending*. This site is also located in the Kent County Growth Zone. Investment Level 3 reflects areas where growth is anticipated by local, county, and state plans in the longer term future, or areas that may have environmental or other constraints to development. State investments will support growth in these areas, but please be advised that the State may have other priorities in the near term future.

State Historic Preservation Office (SHPO) – Contact Alice Guerrant 739-5685

SHPO does not oppose this rezoning. The site contains a historic house (K-4951), which the owner notes has hand-hewn beams and pegged construction. It is possible that this could be the J. Jackson House shown on Beers Atlas of 1868. The rear of the property also has an area of high potential for a prehistoric-period archaeological site.

If the use of the property changes, SHPO requests an opportunity to record the buildings before any changes are made and to check for any archaeological sites before any construction takes place.

Department of Transportation – Contact Bill Brockenbrough 760-2109

Alan J. McCarthy seeks to have two adjacent 2-acre parcels (Tax Parcels MD-152.00-01-38.00 & 39.00) rezoned from IG to BG in Kent County. The subject land is located on southbound US Route 113 (also Delaware Route 1) between Milford and Frederica and more specifically between Tub Mill Pond Road (Kent Road 119) and Old Cemetery Road (Kent Road 402). The parcels are presently used for a residence and a warehouse. Although no specific tenants have been identified, office and retail uses are intended.

DelDOT has no comments on the proposed rezoning, but offers the following comments on the potential development of the property if it should be rezoned.

- 1) Route 113 is classified as a principal arterial road. Right-of-way widths on arterial roads in Delaware vary but DelDOT's policy is to require dedication of sufficient land to provide a minimum right-of-way width of 50 feet from the centerline or, on divided highways such as Route 113, 50 feet from the inside edge of the travelway. Therefore right-of-way dedication along the frontage will be required to provide any additional width needed from this project.
- 2) The response to Question 36 on the PLUS application indicates that the "project" would generate no additional traffic. While specific tenants may not be known, it is generally expected that office and retail uses generate more traffic than residential and warehouse uses. It is understood that the applicant expects to bring in low-volume office uses and answered on that basis.
- 3) The response to Question 38 on the PLUS application is incorrect. The subject land is subject to the Corridor Capacity Preservation Program (CCPP). For that reason, DelDOT will issue permits for direct access only for uses that will generate 200 or fewer trips per day. As long as the present uses are maintained, the owners of the subject land will be permitted access for those uses. However, if the parcels are redeveloped, new access permits will be required and they will be issued only for uses that do not exceed 200 trips per day. For more information regarding the CCPP, the applicant may contact Mr. Charles Altevogt, at (302) 760-2124.
- 4) When a specific use has been determined for the site, the developer's site engineer should contact the project manager for Kent County, Mr. Brad Herb, at (302) 266-9600 to determine what will be required with regard to access

The Department of Natural Resources and Environmental Control

Contact Kevin Coyle 739-3091

Soils

The soils on this parcel were mostly mapped as poorly drained wetland associated (hydric) soils with a seasonal high water at or near the soil surface.

Impervious Surfaces

The applicant did not indicate the projected amount of impervious surface. Nonetheless, the applicant should attempt to reduce impervious cover to the greatest degree practicable. Planting trees and the use of pervious pavers in lieu of asphalt or concrete are two ways to reduce such impacts. Research has consistently shown that once a watershed exceeds a threshold of 10 percent imperviousness, water and habitat quality irreversibly decline.

TMDLs

Although Total Maximum Daily Loads (TMDLs) as a “pollution runoff mitigation strategy” to reduce nutrient loading have not yet been developed for the Mispillion River subwatershed to date, work is continuing on their development. A TMDL is the maximum level of pollution allowed for a given pollutant below which a “water quality limited water body” can assimilate and still meet water quality standards to the extent necessary to support use goals such as, swimming, fishing, drinking water and shell fish harvesting. Although TMDLs are authorized under federal code, states are charged with developing and implementing standards to support those desired use goals. The Jurisdictional authority for attaining these use goals will fall under the auspices of Section 11.5 of the State of Delaware’s Surface Water Quality Standards (as amended August 11, 1999), and will be achieved via nutrient reductions referred to as “pollution control strategies.” TMDLs for the Mispillion watershed, of which this parcel is part, are scheduled for completion in December 2006.

Therefore, until the specified TMDL reductions and pollution control strategies are adopted, it shall be incumbent upon the developer to employ best available technologies (BATs) and/or best management practices (BMPs) as “methodological mitigative strategies” to reduce degradative impacts that might be associated with proposed project..

Water Supply

The project information sheets state that an individual on-site well will be used to provide water for the proposed project. Our records indicate that the project is not located in an area where public water service is available. The Division of Water Resources will consider applications for the construction of on-site wells provided the wells can be constructed and located in compliance with all requirements of the Regulations

Governing the Construction and Use of Wells. In this case, a minimum isolation distance of 150 feet is required between the well and any potential source of contamination, such as a septic tank and sewage disposal area. A well construction permit must be obtained prior to constructing any wells.

Should dewatering points be needed during any phase of construction, a dewatering well construction permit must be obtained from the Water Supply Section prior to construction of the well points. In addition, a water allocation permit will be needed if the pumping rate will exceed 50,000 gallons per day at any time during operation.

All well permit applications must be prepared and signed by licensed water well contractors, and only licensed well drillers may construct the wells. Please factor in the necessary time for processing the well permit applications into the construction schedule. Dewatering well permit applications typically take approximately four weeks to process, which allows the necessary time for technical review and advertising. Should you have any questions concerning these comments, please contact Rick Rios at 302-739-9944.

Water Resource Protection Areas

According to the State law that created the Source Water Protection Program, county and municipal governments with more than 2,000 residents will be required to enact ordinances to protect Water Resource Protection Areas. Municipalities with fewer than 2,000 residents are encouraged to enact such ordinances. The following language has been excerpted from the Source Water Protection Guidance Manual for Local Governments, Supplement 1 - Ground-Water Recharge Design Methodology. While the local ordinances may not yet be in place, the developer may find the language useful in modifying the site plan to protect water resources.

Water Resource Protection Areas (WRPAs) are defined as (1) surface water areas such as floodplains, limestone aquifers, and reservoir watersheds, (2) wellhead areas, or (3) excellent recharge areas. The purpose of an impervious cover threshold is to minimize loss of recharge and protect the quality and quantity of ground and surface water supplies in WRPAs.

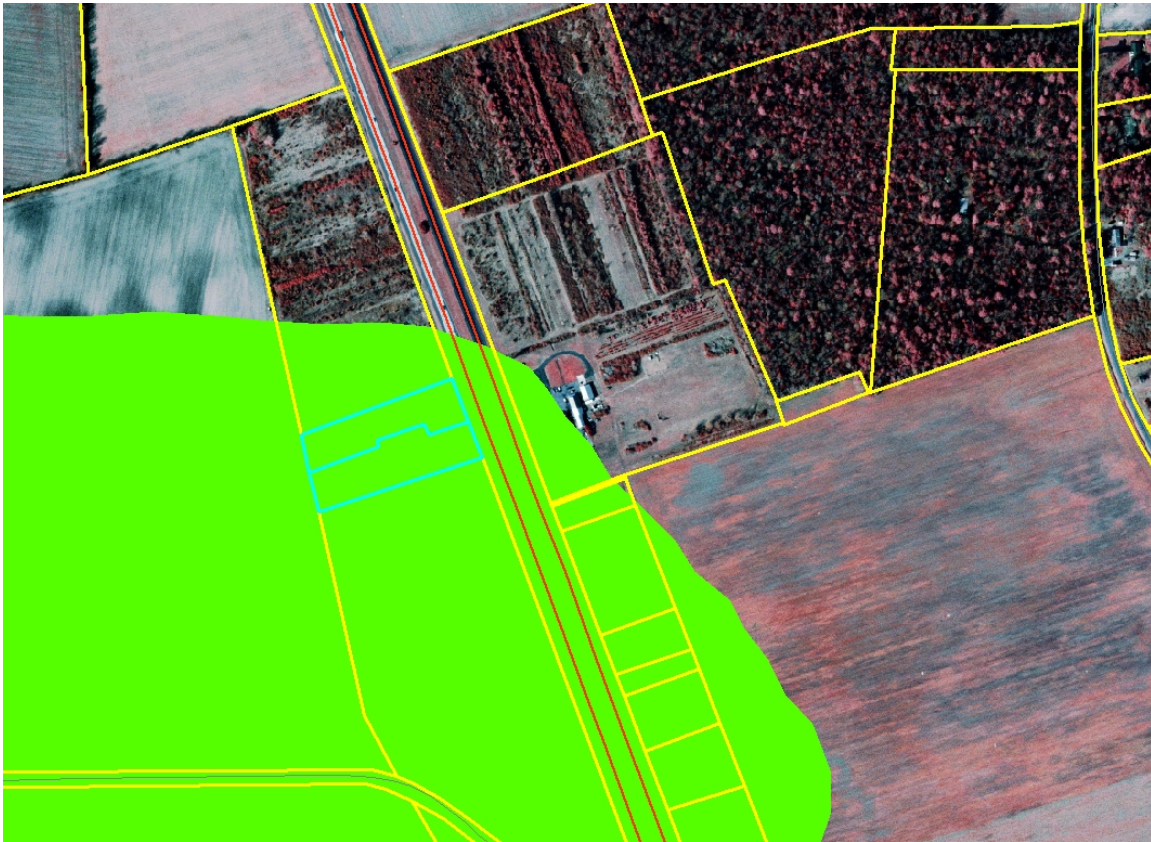
New development in WRPAs may exceed the 20 % impervious cover threshold, but be no more than 50 % impervious, provided the applicant submits an environmental assessment report recommending a climatic water budget and facilities to augment recharge. The environmental assessment must document that post-development recharge will be no less than predevelopment recharge when computed on an annual basis.

Commonly, the applicant offsets the loss of recharge due to impervious cover by constructing recharge basins that convey relatively pure rooftop runoff for infiltration to ground water.

The DNREC Water Supply Section has reviewed the above referenced PLUS project and determined that the entire parcel falls within an area of excellent groundwater recharge. See map below.

The proposed rezoning does not change the impervious cover already on the site. There are no hazardous chemical listed for the new land use of office/retail.

Map of the McCarthy Property with Excellent Recharge area in green



Drainage

The Drainage Section requests that all precautions be taken to ensure the project does not hinder any off site drainage upstream of the project or create any off site drainage problems downstream by the release of on site storm water.

State Fire Marshal's Office – Contact John Rossiter 739-4394

These comments are intended for informational use only and do not constitute any type of approval from the Delaware State Fire Marshal's Office. The State Fire Marshals Office has no objection to the re-zoning request. The information provided below are for when plans are being designed. At the time of formal submittal, the applicant shall provide; completed application, fee, and three sets of plans depicting the following in accordance with the Delaware State Fire Prevention Regulation (DSFPR):

- 1) Fire Protection Water Requirements
 - Since the structures of the complex are proposed to be served by individual on-site wells (No Central Water System), set back and separation requirements will apply.
- 2) Fire Protection Features

- All structures over 10,000 Sq. Ft. aggregate will require automatic sprinkler protection installed.
- Buildings greater than 10,000 sq.ft., 3-stories of more or over 35 feet, or classified as High Hazard, are required to meet fire lane marking requirements.
- For commercial buildings greater than 5000 SqFt, a fire alarm signaling system which is monitored off-site is required
- For commercial buildings greater than 10,000 SqFt Class B (2-hour rated) fire barriers are required to subdivide buildings into areas of 10,000 SqFt. or less.

3) Accessibility

- All premises which the fire department may be called upon to protect in case of fire, and which are not readily accessible from public roads, shall be provided with suitable gates and access roads, and fire lanes so that all buildings on the premises are accessible to fire apparatus. This means that the access road to the subdivision from US 113 must be constructed so fire department apparatus may negotiate it.
- Fire department access shall be provided in such a manner so that fire apparatus will be able to locate within 100 ft. of the front door.
- Any dead end road more than 300 feet in length shall be provided with a turn-around or cul-de-sac arranged such that fire apparatus will be able to turn around by making not more than one backing maneuver. The minimum paved radius of the cul-de-sac shall be 38 feet. The dimensions of the cul-de-sac or turn-around shall be shown on the final plans. Also, please be advised that parking is prohibited in the cul-de-sac or turn around.
- The use of speed bumps or other methods of traffic speed reduction must be in accordance with Department of Transportation requirements.
- The local Fire Chief, prior to any submission to our Agency, shall approve in writing the use of gates that limit fire department access into and out of the development or property.

4) Gas Piping and System Information

- Provide type of fuel proposed, and show locations of bulk containers on plan.

5) Required Notes

- Provide a note on the final plans submitted for review to read “ All fire lanes, fire hydrants, and fire department connections shall be marked in accordance with the Delaware State Fire Prevention Regulations”
- Proposed Use
- Alpha or Numerical Labels for each building/unit for sites with multiple buildings/units
- Square footage of each structure (Total of all Floors)
- National Fire Protection Association (NFPA) Construction Type
- Maximum Height of Buildings (including number of stories)
- Provide Road Names, even for County Roads

Preliminary meetings with fire protection specialists are encouraged prior to formal submittal. Please call for appointment. Applications and brochures can be downloaded from www.delawarestatefiremarshal.com.

Department of Agriculture - Contact: Milton Melendez 739-4811

The Delaware Department of Agriculture has no objections to the rezoning application. However, the western boundary of the property is shared with a State protected Agricultural District. If developed, the 50-foot setback and 300-foot notification zone requirements apply. The developer will be required to place the following deed notice in every new recorded deed located within the development.

§ 910. Agricultural use protections.

a) Normal agricultural uses and activities conducted in a lawful manner are preferred and priority uses and activities in Agricultural Preservation Districts. In order to establish and maintain a preference and priority for such normal agricultural uses and activities and avert and negate complaints arising from normal noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations, land use adjacent to Agricultural Preservation Districts shall be subject to the following restrictions:

(1) For any new subdivision development located in whole or in part within 300 feet of the boundary of an Agricultural Preservation District, the owner of the development shall provide in the deed restrictions and any leases or agreements of sale for any residential lot or dwelling unit the following notice:

"This property is located in the vicinity of an established Agricultural Preservation District in which normal agricultural uses and activities have been afforded the highest priority use status. It can be anticipated that such agricultural uses and activities may now or in the future involve noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations. The use and enjoyment of this property is expressly conditioned on acceptance of any annoyance or inconvenience which may result from such normal agricultural uses and activities."

(2) For any new subdivision development located in whole or in part within 50 feet of the boundary of an Agricultural Preservation District, no improvement requiring an occupancy approval shall be constructed within 50 feet of the boundary of the Agricultural Preservation District.

(b) Normal agricultural uses and activities conducted in accordance with good husbandry and best management practices in Agricultural Preservation Districts shall be deemed protected actions and not subject to any claim or complaint of nuisance, including any such claims under any existing or future county or municipal code or ordinance. In the event a formal complaint alleging nuisance related to normal agricultural uses and activities is filed against an owner of lands located in an Agricultural Preservation District, such owner, upon prevailing in any such action, shall be entitled to recover reasonably incurred costs and expenses related to the defense of any such action, including reasonable attorney's fees. (68 Del. Laws, c. 118, § 2.)

Public Service Commission – Contact Andrea Maucher 739-4247

Regarding water service, the PLUS application notes "individual (on-site)." Should public water be needed, the project is within a Tidewater Utilities Inc. certificated service territory. Any expansion of natural gas or installation of a closed propane system must comply with Federal Pipeline Safety guidelines.

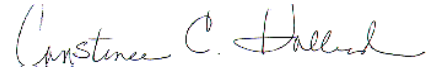
July 12, 2005

Page 8 of 8

Following receipt of this letter and upon filing of an application with the local jurisdiction, the applicant shall provide to the local jurisdiction and the Office of State Planning Coordination a written response to comments received as a result of the pre-application process, noting whether comments were incorporated into the project design or not and the reason therefore.

Thank you for the opportunity to review this project. If you have any questions, please contact me at (302)739-3090.

Sincerely,

A handwritten signature in cursive script that reads "Constance C. Holland".

Constance C. Holland, AICP
Director

CC: Kent County